

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-186918

DATE: August 26, 1976

MATTER OF: Dubie-Clark Company

### DIGEST:

1. Bid taking exception to liquidated damages provision of IFB was properly rejected as nonresponsive since contract awarded upon basis of such bid would not be contract offered to all prospective bidders.
2. Bidder's post-bid-opening offer to substitute liquidated damages amounting to \$26,829 in lieu of \$400 a day as required in IFB may not be considered. Since bid was nonresponsive, alteration of bid after bid opening would be tantamount to permitting substitution of new bid.

On May 24, 1976, the Office of the Architect of the Capitol invited competitive bids under invitation for bids (IFB) No. 7652 for the procurement of chilled water and condenser water pumping units for a new refrigeration plant modifying and enlarging the Capitol Power Plant. Four bids were received and opened on June 30, 1976.

The low bid was submitted by the Dubie-Clark Company. That bid, however, contained certain exceptions to the specifications including an exception to Item 2.4 of the Special Conditions pertaining to liquidated damages. By letter dated July 7, 1976, Dubie-Clark was advised that its exceptions to the IFB appeared to qualify its bid to a material extent and, therefore, rejection of its bid as non-responsive was required.

In a letter dated July 8, 1976, Dubie-Clark protested the contemplated award of the contract to the second low bidder. In that letter, Dubie-Clark states that it took exception to Item 2.4, which provides that the contractor shall be liable to the Government for liquidated damages at the rate of \$400 for each calendar day of delay, and agreed to liquidated damages amounting to 5 percent of its bid or \$26,829 in lieu of \$400 a day. Dubie-Clark also states that the IFB permits the Government to accept late modifications of otherwise successful bids as long as the terms are more favorable to the Government.

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It is a fundamental rule of Government procurement that all bidders must compete for advertised contracts on a common basis. Bidders have a right to assume that the essential requirements of an invitation going to the price, quality, quantity, or delivery provisions of a contract are the same for all bidders. 46 Comp. Gen. 275, 277 (1966) and 30 id. 79 (1950). Where one bidder reserves rights and immunities from responsibility for breach not extended to all bidders by the advertised conditions and specifications, it is clear that a contract awarded upon the basis of such a bid would not be the contract offered to all prospective bidders. Further, our Office has consistently held that deviations from the default provisions of an IFB render the bid nonresponsive. E. M. Gostovich Construction Company, B-180362, February 14, 1974, 74-1 CPD 74; Montague-Betts Company, Incorporated, B-182530, November 19, 1974, 74-2 CPD 270.

In the circumstances, Dubie-Clark's exception to the liquidated damages provision of the IFB was a material deviation that rendered its bid nonresponsive. Further, Dubie-Clark's offer after bid opening to substitute liquidated damages amounting to \$26,829 in lieu of \$400 a day, as required in the IFB, may not be considered. Our Office has often held that a nonresponsive bid may not be considered for correction regardless of the circumstances since to permit a bidder to make its bid responsive by alteration of its bid after bid opening would be tantamount to permitting the substitution of a new bid. See Atlantic Research Corp., B-179641, February 25, 1974, 74-1, CPD 98; 40 Comp. Gen. 132 (1960).

Dubie-Clark has also questioned whether any other bidder can comply with IFB requirement for minimum efficiency of the chilled water pumps of 87 percent and the requirement for bottom suction on the chilled water pumps. Since the record does not reflect that any other bidder took exception to those requirements, their bids would be responsive and it will be the responsibility of the agency to insure the successful bidder's compliance with those requirements.

Accordingly, Dubie-Clark's protest is denied.

Acting

*R. F. K. 114*  
Comptroller General  
of the United States